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Satisfying Admissibility Criteria Set Out in the European Convention on Human Rights: Stumbling Block to the Protection of Human Rights in the Republic of Macedonia

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Abstract

The European Court of Human Rights is established by the European Convention on Human Rights as a judicial control mechanism responsible to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. Its supervision is triggered mainly by individual applications. However, before a case can be examined on the merits, there are certain admissibility requirements foreseen in the ECHR that must be satisfied. The focus of this paper is placed on the importance of the admissibility criteria laid down with the European Convention on Human Rights, particularly as regards the individual applications lodged with the European Court of Human Rights concerning the Republic of Macedonia. This will be elaborated mainly through analysis of the official statistics of the Court as well as consulting relevant literature and documents. It aims to show that there is a lack of sufficient knowledge in relation to the proper implementation of the admissibility criteria as well as that the failure to satisfy the admissibility criteria has a potential to reflect negatively on the protection of human rights. Finally, it suggests possible solutions in order to increase the awareness and the knowledge as regards the admissibility criteria laid down by the Convention.

Keywords: admissibility criteria; European Convention on Human Rights; European Court of Human Rights; Republic of Macedonia.

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1. Introduction

The European Convention on Human Rights ("ECHR" or "the Convention") became a part of the legal system of the Republic of Macedonia ("Macedonia") when it was ratified by the Parliament of Macedonia in 1997 [1]. It is directly applicable and has direct effect [2]. All member states of the Convention are obliged to "secure to everyone within their jurisdiction the rights and freedoms" guaranteed with the Convention [3].

The European Court of Human Rights ("ECtHR or "the Court") is set up by the Convention as a judicial control mechanism responsible "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" [3]. The system of protection of fundamental rights and freedoms established by the Convention is based on the principle of subsidiarity [4:57]. It means that the task of ensuring the application of the Convention falls primarily to the States Parties to the Convention, while the Court should intervene only where States have failed in their obligations [5:19-20]. The Court's supervision is triggered mainly by individual applications. Any individual or legal entity located within the jurisdiction of a State Party to the Convention may lodg an individual application with the Court. The right to lodge an individual petition is "rightly considered as the hallmark and greatest achievement of the ECHR" [6:7]. Namely, individuals, who consider that their human rights guaranteed by the Convention have been violated, have the possibility of lodging a complaint with the Court. The Court has a central role in the European system for the protection of fundamental rights and freedoms [7]. In this sense, it has also a central role in protecting fundamental rights and freedoms as regards Macedonia and its citizens. The Convention has become an indispensable instrument for protection of human rights in Macedonia [7:12]. Namely, having in mind that Macedonia is party to the Convention, every person under Macedonian jurisdiction, who believes that his or her human rights and freedoms guaranteed by the Convention have been violated, has a possibility to lodge an individual application to the ECtHR. However, before a case can be examined on the merits, there are certain admissibility requirements foreseen in the ECHR that must be satisfied. For example, applicants must have exhausted their domestic remedies and must have brought their complaints within a period of six months from the date of the final domestic decision [6:7]. This paper has placed its focus on the importance of the admissibility criteria set out in the ECHR, particularly as regards the individual applications lodged with the Court concerning Macedonia. The elaboration of the issue in question will be mainly conducted through analysis of the official statistics of the Court as well as relevant documents and literature. It aims to show that there is a lack of sufficient knowledge regarding the proper implementation of the admissibility criteria as well as that the failure to satisfy the admissibility criteria has a potential to undermine the protection of human rights. Finally, it suggests possible solutions in order to increase the awareness and the knowledge regarding the admissibility criteria laid down by the Convention.

2. Individual Applications Concerning Macedonia and Admissibility Criteria

The ECtHR has been submerged for years by individual applications as regards the protection of fundamental rights and freedoms of the citizens of the Convention State Parties [6:11], including applications lodged by the citizens of Macedonia [9] [10]. This situation is a result of a variety of reasons [6:11].

Moreover, a vast majority of these applications are rejected for failure to satisfy the admissibility criteria foreseen with the Convention without being examined on the merits [6:11]. For example, in 2016 the Court dealt with 38,505, of which 36,579 applications were declared inadmissible or struck out of the list of cases by a Single Judge, a Committee or a Chamber. Judgments were delivered in respect of 1,926 applications. These statistics show that around 5% of the total applications received by the ECtHR end up with a judgment. Namely, in 2016, 94,73% of the applications that the Court dealt with were declared inadmissible or struck out, while only in 5,27% of those applications judgments were delivered [9].

Macedonia is not an exception in this sense. As of 1 July 2017, there are 354 applications pending before the ECtHR in respect of Macedonia [10]. However, more than 95% of the applications are rejected without being examined on the merits for failure to satisfy one of the admissibility criteria set out in the Convention [6:11,9]. According to the last Analysis of Statistics of the ECtHR, in 2016 the Court dealt with 337 applications concerning Macedonia, of which 321 were declared inadmissible or struck out. It delivered judgments as regards to only 16 applications. In respect to the previous years, the Court dealt with 340 applications concerning Macedonia in 2015, of which 328 were declared inadmissible or struck out. It delivered judgments concerning only 12 applications. In 2014 the Court dealt with 502 applications concerning Macedonia, of which 492 were declared inadmissible or struck out. It delivered judgments concerning only 10 applications [9].

The previously stated data in respect of Macedonia show that less than 5% of the total applications received by the ECtHR end up with a judgment. Namely, in 2016, 95,25% of the applications that the Court dealt with were declared inadmissible or struck out, while only in 4,75% of those applications judgments were delivered. The situation is slightly worse in 2015 and 2014. In 2015, 96,47% of the applications that the Court dealt with were declared inadmissible or struck out and only 3,53% of those applications ended up with a judgment, while in 2014 the percentage of applications that were declared inadmissible or struck out is 98,01% and the percentage of the applications where a judgment was delivered was only 1,99%.

This situation have two main negative effects. Firstly, the Court “is prevented from dealing within reasonable time-limits with those cases which warrant examination on the merits, without the public deriving any real benefit” due to the fact that is has to respond to each application. Secondly, thousands of applicants “inevitably have their claims rejected, often after years of waiting” [6:11].

In any case, the statistics mentioned indicate clearly that “most individual applicants lack sufficient knowledge of the admissibility requirements”. It could also be noted that that this is the case with many legal advisers and practitioners [6:11]. The latter refers particularly to lawyers, who usually advise potential applicants on the prospects on the application and lodge the application to the Court on their behalf.

This problem was rightly identified at the Interlaken Conference on the reform of the Court the member States of the Council of Europe in 2010. In this sense, the idea of providing potential applicants with comprehensive and information on the application procedure and admissibility criteria is explicitly stated in point C-6(a) and (b) of the Interlaken Declaration from 2010 [6:11]. Namely, at the Interlaken Conference the member States of the Council of Europe called upon the “States Parties and the Court to ensure that comprehensive and objective

information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria" [7].

The follow-up conferences in İzmir, Brighton and Brussels held in 2011, 2012 and 2015, respectively, have further emphasized the need to reform the Court and "to ensure the viability of the Convention mechanism in the short, medium and long term" in the declarations that were adopted at the conferences [6:11]. In this sense, the Brussels Declaration from 2015, in its point B-1(a) and (b), called upon "the States Parties to … (a) ensure that potential applicants have access to information on the Convention and the Court, particularly about the scope and limits of the Convention's protection, the jurisdiction of the Court and the admissibility criteria; b) increase efforts at national level to raise awareness among members of parliament and improve the training of judges, prosecutors, lawyers and national officials on the Convention and its implementation, including as regards the execution of judgments, by ensuring that it constitutes an integral part of their vocational and in-service training …" [11].

Having in mind the previously stated, it should also be noted that in order to understand and properly implement the admissibility criteria, one should also have good knowledge about the overall functioning of the ECtHR, particularly as regards its jurisdiction and the procedure before the Court as well as regards the scope and interpretation of the ECHR.

In this sense, it is also worth to be noted that, at the moment, in Macedonia there is a lack of comprehensive, consolidated and updated literature on the overall functioning of the Court available in Macedonian. Moreover, there is even a lack of updated student textbooks available in Macedonian as regards this matter. Protocol 14 to the Convention, which entered into force on 1 June, 2010, has significantly changed the control mechanism of the Convention. Unfortunately, the current literature available in Macedonian, including student textbooks, is not completely updated in order to appropriately reflect the changes that took place within the last couple of years in respect with the Convention system.

3. Single Judge Decisions Concerning Macedonia

The Single Judge formation is introduced by Protocol 14 to the Convention. It is foreseen that "a Single Judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination" [3]. Namely, this formation was created, in the first place, to tackle the vast backlog of clearly inadmissible cases.

It could be noted that large number of the applications in respect of Macedonia that are declared inadmissible or struck out are decided by a Single Judge formation [10,12]. For example, according to the Court statistics, in 2016 there were 279 applications declared inadmissible or struck out by a Single Judge, out of 337 applications that the Court dealt with [10]. In 2015 there were 299 applications declared inadmissible or struck out by a Single Judge out of 340 applications that the Court dealt with [10], while in 2014 there were 354 applications declared inadmissible or struck out by a Single Judge out of 486 applications that the Court dealt with [12].

Decisions concerning Single Judge cases are not published, unlike the decisions and judgments delivered by the

other judicial formations within the Court (Committee of three judges¸ Chamber of seven judges and Grand Chamber of seventeen judges) [3]. In other words, Single Judge decisions cannot be found within the HUDOC system of the ECtHR (database on the website of the ECtHR that contains decisions, judgments and advisory opinions of the court, amongst other documents), which makes it impossible for the public and the legal practitioners to have insight into those decisions and learn more about the reasons for declaring an application inadmissible.

After introducing the possibility for a Single Judge to declare applications inadmissible, the ECtHR developed new working methods in order to tackle the vast backlog of clearly inadmissible cases. Having in mind that in 2011 there were over 100,000 such applications pending, the Court had little choice but to adopt a summary procedure for dealing with them. Accordingly, the applicants received only a decision letter rejecting complaints in a global manner [13].

Following the elimination of that backlog and considering the invitation of the Contracting States in the Brussels Declaration from 2015, the ECtHR developed a new approach, allowing more detailed reasoning to be given. When developing the new approach, the Court "had to strike a balance between addressing a legitimate concern about the lack of individualised reasoning and maintaining an efficient process for handling inadmissible cases so as not to divert too many resources from examining potentially well-founded cases" [13].

As from June 2017 the Court changed the procedure in which it delivers Single Judge decisions. Namely, the applicants do not receive only a decision letter rejecting complaints in global manner anymore. They receive a decision of the Court sitting in Single Judge formation in one of the Court's official languages and signed by a single judge. The decision is accompanied by a letter in the relevant national language and will include, in many cases, reference to specific grounds of inadmissibility. Yet, in some cases the ECtHR will still issue global rejections in some cases, for example, in cases "where applications contain numerous ill-founded, misconceived or vexatious complaints" [13].

However, the inadmissibility decisions delivered by the Single Judge formation are still not published in the HUDOC system of the Court and exist in hard copy only in the Court Archives. Moreover, it is also worth noting that the Committee decisions appeared on HUDOC as of April 2010 (Committees may also declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination) [3].

4. Execution of Judgments in Macedonia

The ECHR obligates Member States to conduct execution of the judgments of the ECtHR (Article 46(1)) as well as execution of the decisions adopted on the basis of a friendly settlement (Article 39(4)) [3]. In order to implement this obligation, states are obliged to undertake individual and general measures [14:1].

The general measures aim to prevent similar injuries in the future, such as those identified in the present case by the ECtHR through changes in legislation, changes in court practice, or other measures. The execution of judgments also requires the undertaking of individual measures by the state, which are aimed at ending the

violation in the present case, and removing, as far as possible, the negative consequences for the applicant. This includes the payment of the sum awarded to the applicant, as well as other measures which are necessary to be undertaken if the pecuniary damage cannot adequately remedy the negative consequences of the violation, such as the repetition of the domestic proceedings [14:4-12].

In Macedonia, the procedure for execution of judgments of the ECtHR, adopted as regards the cases against Macedonia, is regulated by the Law on Execution of Judgments of the European Court of Human Rights [15] [16]. The enforcement of the ECtHR judgments is ensured by paying to the applicant the sum awarded by the Court as just satisfaction, and by adoption of individual and general measures, in order to eliminate the violation and the consequences that it caused, as well as the reasons that led to the filing of an application before the Court and thus appropriately prevent the same or similar injuries [15,16].

Moreover, within the procedural laws there are provisions which foresee that the judgments of the ECtHR are basis for a retrial (repetition of the procedure before the domestic courts), as a form of individual measure in order to successfully execute the ECtHR judgments [17,18,19]. Namely, such provisions are contained in the Law on Criminal Procedure, Law on Civil Procedure and Law on Administrative Disputes [17,18,19].

The execution of the judgments of the ECtHR is of great importance for the protection of human rights in all Member States, including Macedonia, as it provides protection of the rights of the individual and prevents similar cases of human rights violations in the future to appear before the ECtHR [14]. Moreover, the successful execution of judgments contributes significantly to compliance with the ECHR and the practice of the Court, and thus strengthens the protection of human rights.

Consequently, it is very likely that greater protection of human rights will contribute to reduction of applications submitted by individuals to the ECtHR. Additionally, having in mind that the ECtHR court practice has been recognized as a source of human rights within the EU and in this respect it is used by the Court of Justice of the EU ("CJEU") [20:89], as the body in charge of implementing the EU law, it could be noted that the compliance with the provisions of the ECHR and the court practice of the ECtHR means a compliance with the EU law as well. In fact, some of the general principles of the EU law, which are developed by the CJEU as part of its court practice and represent a source of EU law, are extracted directly from the ECHR [20:89].

On the other hand, failure to satisfy the admissibility criteria, as a condition that needs to be met before a case can be examined on the merits, means that it is very likely that there are cases in which the Court might have determined violation if the application was not rejected based on admissibility criteria, and that such a violation could have been remedied through the execution of the judgements on national level as well as that similar violations might have been prevented.

5. Conclusion

In order for the ECtHR to determine a violation concerning a certain application, it needs to be examined on the merits. After examining the merits of the case, the Court delivers judgments in which it always sends a certain message to the State Party as regards a human rights protection problem or deviation, regardless of the fact

whether it determined a violation or not. These judgments of the Court reflect the situation in the judiciary, the administration and other important areas in a democratic society.

In this sense, this type of ECtHR case law concerning Macedonia would be very important in order to point out various flaws and shortcomings in the protection of human rights guaranteed by the Convention. Namely, the judgments of the Court are a corrector of the problems regarding the respect of the standards for protection of human rights, while the successful execution of judgments means compliance with the Convention and the practice of the Court. The latter is very important for strengthening the protection of human rights in Macedonia as well as for its European integration processes.

However, there are certain admissibility requirements foreseen in the ECHR that must be satisfied before a case can be examined on the merits. As it was shown, more than 95% of the individual applications concerning Macedonia are rejected without being examined on the merits, due to failure to satisfy one of the admissibility criteria set out in the Convention, and only less than 5% of the total applications received by the ECtHR end up with a judgment.

It could be concluded that the failure to satisfy the admissibility criteria, as a condition that needs to be fulfilled before a case can be examined on the merits, has a potential to reflect negatively on the protection of human rights in Macedonia. Namely, the failure to meet the admissibility criteria, in order to provide for the application to be examined on the merits, means that it is highly likely that there are cases in which the Court might have determined violation if the application was not rejected based on admissibility criteria, and that such a violation could have been remedied through the execution of the judgements on national level, as well as that similar violations might have been prevented. Unfortunately, as a result to the failure to fulfill the admissibility criteria, the Court is unable to examine such cases in respect to the alleged violation. In any case, the statistics indicate clearly that there is a lack of sufficient knowledge regarding the proper implementation of the admissibility criteria. It could also be concluded that this is the case with many lawyers, as they are the ones who usually advise potential applicants on the prospects on the application and lodge the application to the Court on their behalf. A possible solution to tackle the above described problem would be to provide opportunities for education and training on the particular subject, aimed primarily for lawyers, given that usually they are the ones that actually file the individual applications to the Court, as the applicants' representatives. A reason more to provide such specialized trainings for lawyers is that the lawyers, in general, have little opportunities for training, including training on the ECHR and admissibility criteria, especially compared to judges and prosecutors, who are provided both with initial and continuing training by the Academy for Judges and Prosecutors. There is also a need to provide a comprehensive, consolidated and updated literature and textbooks on the functioning of the ECtHR with particular reference to the admissibility criteria, available in Macedonian and aimed to provide comprehensive and objective information on the overall functioning of the Court to legal practitioners, especially lawyers. Namely, in order to understand and properly implement the admissibility criteria, one should also have a good knowledge about the overall functioning of the ECtHR, particularly as regards its jurisdiction and the procedure before the Court as well as regards the scope and interpretation of the ECHR. The updated and consolidated literature and textbooks would also be very valuable for law students. Namely, providing law students with comprehensive information and sufficient knowledge about the

Convention and the procedure before the Court would be the best investment as regards providing respect for human rights and rule of law, having in mind that law schools produce the future judges, lawyers, prosecutors and other participants in the justice system in Macedonia. It could also be concluded that a large number of the applications concerning Macedonia, which are declared inadmissible or struck out, are decided by a Single Judge. However, the inadmissibility decisions delivered by a Single Judge are not published in the HUDOC database of the Court. This situation deprives one from the opportunity to analyze these decisions and locate the most common mistakes that are made by the applicants in terms of fulfilling the admissibility criteria, in order to learn from it and avoid repeating the same mistakes. In this sense, it would be useful to organize and conduct a study visit to the Court. The aim of this study visit would be, in the first place, to conduct a research regarding the Single Judge decisions concerning Macedonia and try to locate the most common mistakes made by the applicants as regards fulfilment of the required admissibility criteria. This analysis would be published and made available to legal practitioners and law students.

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